



MULTISTATE TAX COMMISSION

*Working together since 1967 to preserve federalism and tax fairness*

### **Resolution Adopting Model Mobile Workforce Statute**

**Whereas**, a fundamental premise of both state and federal taxation is that income is taxable in the jurisdiction where it is earned, and standard practice is to require businesses to withhold individual income tax for a state if an employee of the business earns wage income there; and

**Whereas**, federal legislation has been introduced that would preempt state taxing jurisdiction in response to concerns that different state withholding practices pose challenges for businesses when their employees earn wage income in multiple states; and

**Whereas**, in May 2009, the Executive Committee charged the Uniformity Committee with developing, on an expedited basis, a model state-level solution to the concerns being raised in Congress for states that wish to address them; and

**Whereas**, on March 22, 2010, after committee discussions that benefited from helpful input by the Council on State Taxation and the American Payroll Association, the Uniformity Committee recommended a model mobile workforce statute to the Executive Committee; and

**Whereas**, on April 7, 2010, the Executive Committee voted to approve the model for public hearing, a public hearing was held on May 10, 2010, and a hearing officer's report was provided to the Executive Committee on May 18, 2010; and

**Whereas**, the Executive Committee, after further consideration and amendment, voted to recommend the Commission approve the proposed model mobile workforce statute on March 10, 2011; and

**Whereas**, a bylaw 7 survey was sent to the affected compact members on April 14, 2011, whereupon a majority indicated they would consider adoption of the proposed model mobile workforce statute;

Now, therefore, be it:

**RESOLVED**, that the compact member states adopt the attached model mobile workforce statute as a uniformity recommendation to the states.

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Stephen Cordi, Chair

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Joe Huddleston, Executive Director

Dated: July 27, 2011



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**Model Mobile Workforce Statute**  
***As approved by the Multistate Tax Commission***  
***July 27, 2011***

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**INDIVIDUAL INCOME TAX**

- **Computation of Taxable Income**
    - **Adjusted Gross Income from Sources Within This State.**
      - **Nonresident Compensation, Exclusion**
- (1) Compensation subject to withholding pursuant to [cite to state withholding tax], without regard to [cite to withholding tax exception (below)], that is received by a nonresident for employment duties performed in this state, shall be excluded from state source income if:
- (a) the nonresident has no other income from sources within this state for the tax year in which the compensation was received;
  - (b) the nonresident is present in this state to perform employment duties for not more than 20 days during the tax year in which the compensation is received, where presence in this state for any part of a day constitutes presence for that day unless such presence is purely for purposes of transit through the state; and
  - (c) the nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax.
- (2) This section shall not apply to compensation received by:
- (a) a person who is a professional athlete or member of a professional athletic team;
  - (b) a professional entertainer who performs services in the professional performing arts;
  - (c) a person of prominence who performs services for compensation on a per-event basis;
  - (d) a person who performs construction services to improve real property, predominantly on construction sites, as a laborer; or
  - (e) a person who is a key employee, without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year pursuant to Section 416(i) of the Internal Revenue Code.
  - (f) a person who is an employee of a non-corporate employer, and who would be a key employee, without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year pursuant to Section 416(i) of the Internal Revenue Code, if the term "employee" were substituted for the term "officer" in Section 416(i)(1)(A)(i) and if such person is one of the non-corporate employer's 50 highest paid employees without regard to whether such person is an officer.
- (3) This section shall not prevent the operation, renewal or initiation of any agreement with another state authorized pursuant to [cite to Code section that allows reciprocity agreements].

(4) This section creates an exclusion from non-resident compensation under certain de minimus circumstances and has no application to this state's jurisdiction to impose this or any other tax on any taxpayer.

## **INDIVIDUAL INCOME TAX**

- **Returns and Payment**
  - **Persons required to file returns, exception**

(1) A nonresident whose only state source income is compensation that is excluded pursuant to [Cite to Nonresident Compensation, Exclusion] has no tax liability under this Act and need not file a return. Provided that when, in the judgment of the Department, such nonresident should be required to file an informational return, nothing in this section shall preclude the Department from requiring such nonresident to do so.

(2) This section is applicable to the determination of an individual income taxpayer's filing requirement and has no application to the imposition of, or this state's jurisdiction to impose, this or any other tax on any taxpayer.

## **WITHHOLDING TAX**

- **Withholding from Compensation, Exception**

(1) No amount is required to be deducted or retained from compensation paid to a nonresident for employment duties performed in this state if such compensation is excluded from state source income pursuant to [cite to Nonresident Compensation, Exclusion], without regard to [cite to Nonresident Compensation, Exclusion, § (1)(a)]. The number of days a nonresident employee is present in this state for purposes of [cite to Nonresident Compensation, Exclusion § (1)(b)] shall include all such days the nonresident employee is present and performing employment duties in the state on behalf of the employer and any other related person.

- (a) For purposes of this section (1), "related person" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (1) a related entity, (2) a component member as defined in subsection (b) of section 1563 of the Code; (3) a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Code; or (4) a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) to (3), inclusive.
- (b) For purposes of this section (1), "related entity" means (1) a stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(2) An employer that has erroneously applied the exception provided by this section solely as a result of miscalculating the number of days a nonresident employee is present in this state to perform employment duties shall not be subject to penalty imposed under [cite to withholding penalty provisions] if:

- (a) the employer relied on a regularly maintained time and attendance system that (i) requires the employee to record, on a contemporaneous basis, his or her work location each day the employee is present in a state other than (A) the state of residence, or (B) where services are considered performed for purposes of [cite to state unemployment insurance statute], and (ii) is used by the employer to allocate the employee's wages between all taxing jurisdictions in which the employee performs duties;
- (b) the employer does not maintain a time and attendance system described in subsection (a) and relied on employee travel records that the employer requires the employee to maintain and record on a regular and contemporaneous basis; or
- (c) the employer does not maintain a time and attendance system described in subsection (a), or require the maintenance of employee records described in subsection (b), and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.

(3) This section establishes an exception to withholding and deduction requirements and has no application to the imposition of, or this state's jurisdiction to impose, this or any other tax on any taxpayer.